UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MEGAN D. ERASMUS,

Plaintiff,

v.

RYAN A. DUNLOP, D.M.D., INC., a California Professional Corporation, dba Better Life Center for Implant and General Dentistry,

Defendant

CASE NO. 1:21-cv-01236-AWI-SAB

ORDER ON DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

(Doc. Nos. 13)

Plaintiff Megan D. Erasmus filed a Complaint against Defendant Ryan A. Dunlop, D.M.D., Inc., asserting causes of action under the Americans with Disabilities Act ("ADA") and California's Unruh Civil Rights Act. Doc. No. 1. Pending before the Court is Defendant's Motion to Dismiss Plaintiff's Complaint. Doc. No. 13. For the reasons discussed below, the Court will grant in part and deny in part Defendant's Motion.

BACKGROUND[1]

Plaintiff is a California resident who is completely deaf and therefore relies entirely on closed captioning to consume audio content such as movies, videos, or tutorials. Doc. No. 1, ¶ 1. Defendant is a professional corporation that owns or operates Better Life Center for Implant and General Dentistry (BLCIGD) located in Fresno County, California. Id. at ¶ 2. In July 2021, Defendant owned and operated BLCIGD's Website, https://www.betterlifedentistry.com/. Id. at ¶ 4. Defendant currently owns the Website. Id. at ¶ 5. Plaintiff alleges the Website is a nexus

[1] This section summarizes allegations set forth in the Complaint. See Doc. No. 1.

between Defendant's customers and the privileges, goods, or services offered by Defendant. Id. at ¶ 13. Additionally, Plaintiff alleges Defendant offers videos on the Website "to induce customers to purchase its goods or services." Id. at ¶ 14.

Plaintiff visited the Website in July 2021 as a prospective customer looking for information about Defendant's services. Id. at ¶¶ 15, 16. Plaintiff discovered the video content on the Website lacked closed captioning which made her "unable to fully understand and consume the video contents." Id. at ¶ 17. Plaintiff allegedly experienced difficulty and discomfort in attempting to view the video "Smile Restoration in Fresno" and, consequently, was "deterred from further use of the Website." Id. at ¶ 18. Plaintiff alleges that despite her multiple attempts to access the Website on her mobile device, she was "denied the full use and enjoyment of the facilities, goods and services offered by Defendant[] as a result of the accessibility barriers." Id. at ¶ 20. Further, Plaintiff alleges she "is a tester in this litigation and seeks future compliance with all federal and state laws . . . [and she] will return to the Website to avail herself of its goods and/or services and to determine compliance with the disability access laws once it is represented to her that [Defendant] and [the] Website are accessible." Id. at ¶ 26.

On August 15, 2021, Plaintiff filed her Complaint seeking damages, declaratory relief, injunctive relief, and attorney fees under the ADA and California's Unruh Civil Rights Act. Doc. No. 1. Defendant thereafter filed its Motion to Dismiss the Complaint for lack of subject matter jurisdiction under Fed. R. Civ. Pro. 12(b)(1) and for failure to state a claim under Fed. R. Civ. Pro. 12(b)(6). Doc. No. 13.

LEGAL STANDARDS

A. Rule 12(b)(1)

A motion under Rule 12(b)(1) challenges a federal court's jurisdiction to decide claims alleged in the complaint. Fed. R. Civ. P. 12(b)(1); see also Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). A court considering a motion to dismiss for lack of subject matter jurisdiction is not restricted to the face of the complaint and may review evidence of those facts to resolve factual disputes where necessary. Young v. United States, 769 F.3d 1047, 1052 (9th Cir. 2014). "Once

challenged, the party asserting subject matter jurisdiction has the burden of proving its existence." Miller v. Wright, 705 F.3d 919, 923 (9th Cir. 2013) (citing Robinson v. United States, 586 F.3d 683, 685 (9th Cir. 2009)).

The Court lacks subject matter jurisdiction and the case must be dismissed if the plaintiff lacks standing under Article III of the United States Constitution. City of Oakland v. Lynch, 798 F.3d 1159, 1163 (9th Cir. 2015). To satisfy Article III standing, a plaintiff must allege: (1) an injury-in-fact that is concrete and particularized, as well as actual or imminent, not conjectural or hypothetical; (2) that is fairly traceable to the challenged action of the defendant; and (3) that is redressable by a favorable judicial decision. Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016); SmileDirectClub, Ltd. Liab. Co. v. Tippins, 31 F.4th 1110, 1117 (9th Cir. 2022). The plaintiff bears the burden of proof and must "clearly . . . allege facts demonstrating each element." Spokeo, Inc., 578 U.S. at 338 (quoting Warth v. Seldin, 422 U.S. 490, 518 (1975)). To determine whether the plaintiff met her burden for each element of standing at the pleading stage, the Court must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party. Confederated Tribes & Bands of the Yakama Nation v. Yakima Cty., 963 F.3d 982, 989 (9th Cir. 2020).

B. Rule 12(b)(6)

Under Rule 12(b)(6), a cause of action may be dismissed where a plaintiff fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Dismissal under Rule 12(b)(6) may be based on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. Godecke ex rel. United States v. Kinetic Concepts, Inc., 937 F.3d 1201, 1208 (9th Cir. 2019) (citing Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990)). To survive a Rule 12(b)(6) motion for failure to allege sufficient facts, a complaint must include a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Compliance with this rule ensures that the defendant has "fair notice" of the claims against it. Williams v. Yamaha Motor Co., 851 F.3d 1015, 1025 (9th Cir. 2017) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Under this standard, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." Irving

Firemen's Relief & Ret. Fund v. Uber Techs., Inc., 998 F.3d 397, 403 (9th Cir. 2021) (quoting Twombly, 550 U.S. at 570). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the alleged misconduct. Id. (citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)).

In reviewing a complaint under Rule 12(b)(6), all allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party. Benavidez v. Cty. of San Diego, 993 F.3d 1134, 1144 (9th Cir. 2021). But the Court is "not 'required to accept as true allegations that contradict exhibits attached to the Complaint or matters properly subject to judicial notice, or allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.'" Seven Arts Filmed Entm't, Ltd. v. Content Media Corp. PLC, 733 F.3d 1251, 1254 (9th Cir. 2013) (quoted source omitted). Complaints that offer no more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Benavidez, 993 F.3d at 1145 (citing Iqbal, 556 U.S. at 678). Rather, "[f]or a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." Hernandez v. City of San Jose, 897 F.3d 1125, 1132 (9th Cir. 2018) (citing Iqbal, 556 U.S. at 678).

If a motion to dismiss is granted, a "district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." Perez v. Mortg. Elec. Registration Sys., 959 F.3d 334, 340 (9th Cir. 2020) (citing Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000)).

DISCUSSION

A. Motion to Dismiss

Defendant argues that the Complaint should be dismissed on several grounds, including (1) Plaintiff's ADA cause of action is moot because the Website's video now has closed captioning; (2) Plaintiff lacks standing because the Complaint fails to allege an injury in fact arising from Plaintiff's visit to the Website; and (3) the court should decline to exercise supplemental jurisdiction over Plaintiff's Unruh Act claim. The Court will address each basis for dismissal below in turn.

1. Mootness

Defendant's Arguments

Defendant argues that Plaintiff's ADA claim is moot because Defendant's Website had only one video and it now has closed captioning. Therefore, Defendant asserts that any alleged claim that the Website lacked closed captioning has been remedied. Defendant further opines that there is no reasonable expectation that the alleged violation will recur.

Plaintiff's Arguments

Plaintiff contends that Defendant's voluntary cessation of its challenged practice does not moot Plaintiff's ADA claim. According to Plaintiff, Defendant failed to satisfy its "heavy burden" of proving that the Website's lack of closed captioning cannot reasonably be expected to recur. Plaintiff further argues that Defendant failed to offer any evidence that it will ensure that the website will be compliant moving forward.

Legal Standard

Article III of the Constitution limits federal subject matter jurisdiction to "cases" and "controversies." U.S. Const. Art. III. "A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." City of Erie v. Pap's A.M., 529 U.S. 277, 287 (2000); see also Knox v. SEIU, Local 1000, 567 U.S. 298, 307 (2012) ("A case becomes moot only when it is impossible for a court to grant 'any effectual relief whatever' to the prevailing party."). However, "[a] defendant's voluntary cessation of allegedly unlawful conduct ordinarily does not suffice to moot a case." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 174 (2000). A defendant claiming that its voluntary compliance moots a case bears the "formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." Id. at 190 (citing United States v. Concentrated Phosphate Exp. Ass'n, 393 U.S. 199, 203 (1968)).

In the ADA context, "a defendant's voluntary removal of alleged barriers prior to trial can have the effect of mooting a plaintiff's ADA claim." Oliver v. Ralphs Grocery Co., 654 F.3d 903, 905 (9th Cir. 2011); see also Hubbard v. 7-Eleven, Inc., 433 F. Supp. 2d 1134, 1145 (S.D. Cal. 2006). However, courts have carved out an exception to mootness for acts that are "capable of

repetition, yet evading review." Friends of the Earth, 528 U.S. at 190. Nonstructural barriers such as a policy change that "could be easily abandoned or altered in the future" may not be "the kind of permanent change that proves voluntary cessation." Bell v. City of Boise, 709 F.3d 890, 901 (9th Cir. 2013); see also Langer v. Pep Boys Manny Moe & Jack of Cal., 2021 U.S. Dist. LEXIS 8680, *9-*10 (N.D. Cal. Jan. 15, 2021) (collecting cases in which courts were reluctant to find that an ADA plaintiff's claims were mooted because the alleged barriers were not structural in nature).

Discussion

Although Defendant allegedly modified the Website to be ADA complaint, it is not "absolutely clear the [Website's lack of closed captioning] could not reasonably be expected to recur." Friends of the Earth, 528 U.S. at 190; see also National Fed'n of the Blind v. Target Corp., 582 F. Supp. 2d 1185, 1193 (N.D. Cal. 2007) ("[T]he continuous addition of new pages to Target.com argues against a mootness finding," as "[a]side from the incompleteness of the modifications and the potential for new pages, it is well-settled law that voluntary cessation of allegedly illegal conduct . . . does not make the case moot."); Johnson v. SSR Grp., Inc., 2016 U.S. Dist. LEXIS 89648, *12 (N.D. Cal. July 11, 2016) ("While laudable, these voluntary remediation efforts are not structural in nature, and could easily reoccur despite [d]efendant's best intentions"). Aside from conclusory allegations that the Website's lack of closed captioning will not recur, Defendant has not presented sufficient evidence that its voluntary cessation of the challenged conduct suffices to moot this case. See Erasmus v. Andrea Tse M.D., Inc., 2022 U.S. Dist. LEXIS 107569, at *14 (finding plaintiff's ADA claim was not moot despite defendant's voluntary cessation in a nearly identical action filed by the same Plaintiff and Plaintiff's counsel as the instant action). Therefore, the Court denies Defendant's motion to dismiss with respect to its mootness claim.

2. Standing

Defendant's Arguments

Defendant argues that the Complaint fails to establish standing because it does not demonstrate that Plaintiff suffered any actual injury by not being able to receive oral surgery or other dental services at Defendant's office. According to Defendant, oral surgery services are not

sold through the Website because such services come only after a personal consultation and examination of the patient in Defendant's physical location. The Website, Defendant opines, is nothing more than an electronic billboard that describes the provider and the type of oral surgeries and dental services that Defendant performs. Thus, Defendant contends that the Complaint should be dismissed because it does not allege any facts that connect the Website with the services provided by Defendant at a fixed location.

Plaintiff's Arguments

Plaintiff argues that she suffered actual injuries in that the Website's lack of closed captioning made her unable to fully understand and consume the contents of its videos. This allegedly caused Plaintiff to experience difficulty and discomfort in attempting to view the video and, consequently, she could not understand its content and was deterred from further use of the Website. Plaintiff also argues that the Complaint sufficiently alleges that the Website is a nexus between Defendant's customers and the terrestrial based privileges and services offered by Defendant's facilities. According to Plaintiff, the Website is not a standalone website that operates only in cyberspace because the Website offers information about the various treatments offered at Defendant's physical place of accommodation. Plaintiff further argues that whether persons can directly purchase goods or services via the Website is inapposite under Ninth Circuit case law.

Legal Standard

Title III of the ADA provides that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. § 12182(a). Discrimination by a "place of public accommodation" under the ADA includes, inter alia, "a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services," unless such steps "would fundamentally alter" the nature of the goods, services, or privileges being offered or "would result in an undue burden." 42 U.S.C. § 12182(b)(2)(A)(iii).

To establish standing for injunctive relief, which is the only remedy available under the ADA, the plaintiff must demonstrate "a sufficient likelihood that he will again be wronged in a similar way . . . [t]hat is, he must establish a real and immediate threat of repeated injury." Fortyune v. American Multi-Cinema, Inc., 364 F.3d 1075, 1081 (9th Cir. 2004) (quoting City of Los Angeles v. Lyons, 461 U.S. 95, 111 (1983)). An ADA plaintiff may satisfy this requirement "either by demonstrating deterrence, or by demonstrating injury-in-fact coupled with an intent to return to a noncompliant facility." Chapman v. Pier 1 Imports (U.S.) Inc., 631 F.3d 939, 944 (9th Cir. 2011).

An ADA injury-in-fact arises when accessibility barriers deter the plaintiff from returning to a facility or they otherwise interfere with the plaintiff's "full and equal enjoyment" of the facility. Id. at 947. The places of public accommodation must be "actual, physical places where goods or services are open to the public, and places where the public gets those goods or services," or, there must at least be "some connection between the good or service complained of and an actual physical place[.]" Weyer v. Twentieth Century Fox Film Corp., 198 F.3d 1104, 1114 (9th Cir. 2000). Where the alleged accessibility barrier is on a website, the plaintiff must plead a sufficient "nexus" between the website and a physical place of public accommodation. Robles v. Domino's Pizza, LLC, 913 F.3d 898, 905 (9th Cir. 2019); see also National Fed'n of the Blind, 452 F. Supp. 2d at 952 ("[C]ourts have held that a plaintiff must allege that there is a 'nexus' between the challenged service and the place of public accommodation."). On their own, websites are not places of public accommodation. See Weyer, 198 F.3d at 1114; Cullen v. Netflix, Inc., 880 F. Supp. 2d 1017, 1023-24 (N.D. Cal. 2012) ("The Netflix website is not 'an actual physical place' and therefore, under Ninth Circuit law, is not a place of public accommodation."); Young v. Facebook, Inc., 790 F. Supp. 2d 1110, 1115 (N.D. Cal. 2011) ("Facebook operates only in cyberspace, and [] thus is not a 'place of public accommodation' as construed by the Ninth Circuit.").

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Discussion

Upon review, the Court finds that the Complaint fails to establish standing because it does not sufficiently allege a nexus between the Website and Defendant's physical office. Robles, 913 F.3d at 905; Weyer, 198 F.3d at 1114.

In *Robles*, the Ninth Circuit held that the ADA applied to the defendant's website because it connected customers to the goods and services provided by the defendant's places of public accommodation. Robles, 913 F.3d at 905-06. The defendant's website specifically allowed customers to locate and order food from physical locations for either delivery or in-store pickup. Id. at 902. The Ninth Circuit found that these features made the website sufficiently connected with physical stores and fall within the protection of the ADA. Id. at 905. However, the Ninth Circuit did not state whether these features are always needed for a website to establish such a nexus. The Ninth Circuit explicitly stated "[w]e need not decide whether the ADA covers the websites or apps of a physical place of public accommodation where their inaccessibility does not impede access to the goods and services of a physical location." Id. at 905 n.6.

Despite the Ninth Circuit's silence on this issue, numerous California district courts have found no nexus where the complaint failed to plead that web-based barriers impeded the plaintiff from accessing or ordering goods or services from a physical location. See Downing v. SBE/Katsuya USA, LLC, 2022 U.S. Dist. LEXIS 63584, *7-8 (C.D. Cal. Apr. 5, 2022) (finding no nexus because Plaintiff "does not allege that she attempted to place any such order" on defendant's website or that she "sought specific goods from any particular [defendant's] location"); Brooks v. Lola & Soto Bus. Grp., Inc., 2022 U.S. Dist. LEXIS 37246, *16-17 (E.D. Cal. Mar. 1, 2022) (finding no nexus because plaintiff "does not allege she tried to order clothes from the Website for pickup at Defendant's shop but was unable to do so" or that the website was interconnected with "Defendant's physical store comparable to that encountered in *Robles*"); Langer v. Carvana, 2021 U.S. Dist. LEXIS 188764, *8 (C.D. Cal. Aug. 24, 2021) (finding no nexus because plaintiff "has not pleaded that he was prevented from accessing any physical location or from ordering any products and/or services as a result of the alleged barriers on [defendant's] Website"); Brooks v. See's Candies, Inc., 2021 U.S. Dist. LEXIS 153158, *9 (E.D.

Cal. Aug. 12, 2021) (finding no nexus because plaintiff "does not allege she tried to order candy from the website for pickup at [defendant's] shop but was unable to do so" or that the website was integrated with defendant's "physical store comparable to that encountered in *Robles*"); Langer v. Pep Boys Manny Moe & Jack of Cal., 2021 U.S. Dist. LEXIS 8680, *17-18 (N.D. Cal. Jan. 15, 2021) (finding no nexus because the complaint "does not allege that [plaintiff] intended to visit [defendant's] location and could not because the website was inaccessible" or that "he was trying to use the website to order goods or services from [defendant's] physical location"). While this appears to be the majority position among district courts in California, a minority of courts have held the opposite, that is, ADA plaintiffs are not required to allege that the website prevented them from physically accessing the defendant's goods or services. See Erasmus v. Perry, 2021 U.S. Dist. LEXIS 184460, *7 (E.D. Cal. Sep. 24, 2021) ("[T]o the extent that the decisions of other district courts in the Ninth Circuit [including *Brooks* and *Pep Boys Manny Moe & Jack of Cal.*] may be read to suggest that such a requirement nonetheless exists, this court disagrees."); Erasmus v. Andrea Tse M.D., Inc., 2022 U.S. Dist. LEXIS 107569, *18 (E.D. Cal. June 15, 2022). After considering these cases, the Court agrees with the majority approach which appears to be more consistent with *Robles*. Therefore, the Court will respectfully decline to follow *Perry* and *Andres Tse M.D.*

Applying the majority approach in this case, the Court finds that the Complaint does not sufficiently state an ADA claim because it does not allege that web-based barriers impeded Plaintiff from accessing or ordering goods or services from Defendant's office. The Complaint alleges that Plaintiff "visited the Website in July 2021 as she wanted to learn more about their services." Doc. No. 1, ¶ 16. It also alleges that "despite multiple attempts to access the Website using Plaintiff's mobile device, Plaintiff was denied the full use and enjoyment of the facilities, goods and services offered by Defendants" and was "deterred from further use of the Website." Id., ¶¶ 18, 20. The Complaint further states that "Plaintiff will return to the Website to avail herself of its goods and/or services" once it is "represented to her that [Defendant] and the Website are accessible." Id., ¶ 26. However, the Complaint does not allege that Plaintiff tried to order dental services from Defendant's physical office but was unable to do so. Neither does the

Complaint allege that the Website prevented Plaintiff from setting up a personal consultation at Defendant's physical office which, according to Defendant, is a prerequisite to obtaining any of Defendant's services. Doc. No. 13 at 6.[2] Furthermore, the Complaint does not allege that Plaintiff intended to visit Defendant's office and could not because the Website was inaccessible. Because the majority of California district courts agree that a nexus requires web-based barriers to impede the plaintiff from accessing or ordering goods or services from a physical location, the Complaint's allegations that Plaintiff had difficulty watching a video on Defendant's website is not sufficient to allege injury under the ADA. See Downing, 2022 U.S. Dist. LEXIS 63584, at *7-8; Lola & Soto Bus. Grp., Inc., 2022 U.S. Dist. LEXIS 37246, at *16-17; Carvana, 2021 U.S. Dist. LEXIS 188764, at *8; See's Candies, 2021 U.S. Dist. LEXIS 153158, at *9; Pep Boys Manny Moe & Jack of Cal., 2021 U.S. Dist. LEXIS 8680, at *17-18. Therefore, the Court will dismiss Plaintiff's ADA claim with leave to amend.

3. Unruh Act

Parties' Arguments

Defendant argues that the Court has original jurisdiction over Plaintiff's ADA claim only, and that if the ADA claim is dismissed, the Court should decline to exercise supplemental jurisdiction over the Complaint's remaining California Unruh Act claim. In response, Plaintiff asserts that even if the Court dismisses her ADA claim, the Court should retain supplemental jurisdiction over her Unruh Act claim because courts routinely do so even after the ADA claim is dismissed.

Discussion

A plaintiff can recover under the Unruh Act on grounds that: (1) a violation of the ADA occurred under California Civil Code § 51(f); or (2) that she was denied access to a business establishment due to intentional discrimination in violation of California Civil Code § 52. See Munson v. Del Taco, Inc., 46 Cal. 4th 661, 670 (2009). Here, as discussed above, the Complaint does not sufficiently allege an ADA violation. Because the ADA claim is the only claim over

[2] The Court notes that neither the Complaint nor the opposition challenge the assertion that the relevant services could not be purchased online by any consumer.

which Plaintiff asserts the Court has original jurisdiction, the Court will dismiss Plaintiff's Unruh Act claim as well.[3] See Scott v. Pasadena Unified Sch. Dist., 306 F.3d 646, 664 (9th Cir. 2002) (holding that where a court dismisses a federal claim for lack of standing, the court "ha[s] no discretion to retain supplemental jurisdiction over [plaintiff's] state law claims"); Herman Family Revocable Tr. v. Teddy Bear, 254 F.3d 802, 806 (9th Cir. 2001) ("If the district court dismisses all federal claims on the merits, it has discretion under § 1367(c) to adjudicate the remaining claims; if the court dismisses for lack of subject matter jurisdiction, it has no discretion and must dismiss all claims."). The general rule is "when federal claims are dismissed before trial . . . pendent state claims should also be dismissed." Religious Tech. Ctr. v. Wollersheim, 971 F.2d 364, 367-68 (9th Cir. 1992).

ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. Defendant's motion to dismiss the Complaint (Doc. No. 13) is GRANTED in part and DENIED in part as discussed above.
2. Plaintiff may file an amended complaint that is consistent with this order no later than twenty-one (21) days from service of this order;
3. If Plaintiff files an amended complaint, Defendants shall file a response within twenty-one (21) days of service of the amended complaint; and
4. The failure of Plaintiff to file a timely amended complaint will result in the withdrawal of leave to amend and the closure of this case without further notice.

IT IS SO ORDERED.

Dated: July 18, 2022

SENIOR DISTRICT JUDGE

[3] Because the Court dismissed Plaintiff's ADA claim with leave to amend, Plaintiff may reallege her Unruh Act claim in any amended complaint.